IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 21559 of 2004(N)

OS.23/2000 of SUB COURT, MUVATTUPUZHA

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PETITIONER:

JIJI MATHEW, AGED 49 YEARS, S/O.MATHEW,
PITTAPILLIL HOUSE,
PERINGAZHE, ARUKUZHE.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENT:

RAVINDRAN NAIR,
S/O.NARAYANAN NAIR,
RAJITHA BHAVAN,
VELLOORKUNNAM.

BY ADV. SRI.P.FAZIL
SRI.P.T.ARUNKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.21559/04

APPENDIX

PETITIONER'S EXTS:

APPENDIX

PETITIONER’S EXTS:

EXT.P1 – TRUE COPY OF I.A.417/02 IN O.S.23/2000 DT.21.3.02 AND THE ORDER THEREIN

EXT.P2 TRUE COPY OF I.A.418/02 IN DO. DATED 21.3.02 AND THE ORDER THEREIN DT.11.6.02.

EXT.P3 – TRUE COPY OF EX PARTE DECREE IN O.S.23/00 DT.23.1.02.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.21559 OF 2004

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DATED THIS THE 6TH JUNE, 2007

J U D G M E N T

The orders passed by the trial court on Ext.P2 application filed by the petitioner for setting aside the ex parte decree and on Ext.P1 application for condoning the delay caused in the matter are under challenge in this proceeding under Article 227 of the Constitution of India. The learned Sub Judge allowed Ext.P1 application on condition that the petitioner pays a sum of Rs.2000/- by way of costs to the respondent within a stipulated period. Due to non-payment of costs, both the applications were dismissed. In this proceeding under Article 227, the petitioner challenges only the consequential order rejecting the applications for non-payment of costs.

2. Several grounds have been raised in the Writ Petition and the learned counsel for the petitioner Sri.Peeyus A.Kottam submits that the petitioner is not to blame for non-payment of the costs on time. According to him, the amount necessary for payment of costs was entrusted by him to the advocate's clerk who falsely represented to the petitioner that the amount was already under deposit. The money was siphoned off by the clerk. The petitioner was made to believe that the money is already deposited. If the petitioner was informed that

the amount was not actually deposited, he would have seen to it that either the amount is deposited on time or got the the time enlarged by the court and made the deposit.

3. Mr. P.Fazil, learned counsel for the respondent submits that the ex parte decree passed by the court became final only on 11.6.2002 and after waiting for about 9 months, execution petition was filed only on 18.3.2003 seeking recovery of a sum of Rs.2,25,000/- due to the decree-holder. The petitioner entered appearance on the first posting date itself and availed as many as 12 adjournments in the execution petition. On the 12th posting date, the case was posted to 23.7.2004 on which date he reported to the court that the instant Writ Petition has been filed by him on 19.7.2004.

4. I do not find any material placed by the petitioner either before the court below or in this Court which will show that his explanation that the money had been entrusted with the advocate's clerk and that the advocate's clerk falsely represented to him that the amount was deposited, is correct. It was a conditional order which was passed by the trial court on Exts.P1 and P2 applications and due to non-compliance of the conditions imposed, the applications stood dismissed. The trial court cannot be blamed for having noticed the

non-payment of costs and dismissed the applications finally.

5. So also, there is some merit in the submission of the learned counsel for the respondent that the discretionary jurisdiction of this Court is not to be invoked in favour of a person who does not act on time. In the instant case, it is seen that the petitioner waited for more than an year after entering appearance before the execution court and availed as many as 12 adjournments before he moved this Court. At the same time, the fact remains that the decree which is being executed against the petitioner is an ex parte decree and that the petitioner was not able to raise his contentions. I am inclined to grant him an opportunity to raise his contentions in the suit, but only on strict conditions, since the petitioner is to blame himself for the predicament in which he is presently placed.

6. The final orders passed by the Sub Court, Muvattupuzha on Exts.P1 and P2 applications will stand set aside and both the applications will stand allowed, provided the petitioner complies with the following conditions faithfully:-

1. The petitioner deposits a sum of Rs.50,000/- before a Nationalised Bank or a private sector scheduled bank having branch at Muvattupuzha and gets a lien noted on the

Fixed Deposit receipt towards the decree-debt in O.S.No.23 of 2000 and produces the original of the receipt before the Sub Court within four weeks from today.

2. The petitioner pays a sum of Rs.5000/- by way of costs to the respondent either directly or through his counsel in this Court within three weeks from today.

3. The petitioner pays a further sum of Rs.500/- to the High Court Legal Services Committee within the same time-limit against receipt.

If all the above three conditions are not complied with, the Writ Petition will stand dismissed under which event the execution court will be bound to continue with the execution of the decree. But if the conditions are complied with and the order setting aside the ex parte decree becomes operative, the execution court will close the E.P.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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